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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,358	03/26/2004	Ker-Sang Chen	9188R&	1244

27752 7590 05/16/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

SHAFFER, SHULAMITH H

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/810,358	CHEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shulamith H. Shafer, Ph.D.	1647	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-45 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim(s) 1-23, drawn to a method for determining efficacy of a treatment of inflammatory diseases of the bowel *in vivo*, classified in class 435, subclass 6.
- II. Claim(s) 24-45, drawn to an *in vitro* method of screening compositions for efficacy in treatment of inflammatory diseases of the bowel, classified in class 435, subclass 6.

The inventions are distinct, each from the other because of the following reasons:

Although there are no provisions under the section for "Relationship of Inventions" in M.P.E.P. § 806.05 for inventive groups that are directed to different methods, restriction is deemed to be proper because the methods of Inventions I and II, appear to constitute two patentably distinct inventions for the following reasons:

Invention I is directed to determining efficacy of a treatment of inflammatory diseases of the bowel in mammals *in vivo*. Invention II recites an *in vitro* method of screening compositions for efficacy in treatment of inflammatory diseases of the bowel. The methods of Invention I and II have different intended uses, goals, starting and ending points and require different method steps. The methods of Invention I requires search for a specific patient population, which is not required for the methods of Invention II. The search for the two methods would not be coextensive and would provide a serious search burden on the Examiner and the resources of the USPTO.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, and would require different searches, restriction for examination purposes as indicated is proper.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

**Whether Applicant elects Group I or II, a further election of species is required:**

**A.** This application contains claims directed to the following patentably distinct species: anti-inflammatory cytokines:

- a. interleukin-10
- b. transforming growth factor- $\beta$
- c. interleukin-4
- d. interleukin-5
- e. interleukin-13

The species are independent or distinct because they are different proteins of different amino acid sequences, that require separate searches. Further, a reference against one would not necessarily constitute a reference against the other.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claims 1-3, 9-23 (Group I), and 24-27, 30, 31, 35-45, (Group II) are generic.

**B.** This application contains claims directed to the following patentably distinct species: pro-inflammatory cytokines:

- 1. interleukin-12

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2. tumor necrosis factor- $\alpha$
3. interferon- $\gamma$
4. interleukin-2

The species are independent or distinct because they are different proteins of different amino acid sequences, that require separate searches. Further, a reference against one would not necessarily constitute a reference against the other.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claims 1-5, 9-23 (Group I), and 24-29, 35-45, (Group II) are generic.

**C.** This application contains claims directed to the following patentably distinct species: compound induces *in vitro* stimulation:

- i. lipopolysaccharide
- ii. lectin
- iii. superantigen
- iv. probiotic
- v. anti-CD3 molecule

The species are independent or distinct because they are different compounds of different structures that require separate searches. Further, a reference against one would not necessarily constitute a reference against the other.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-11 and 16-23 (Group I), and 24-34 and 39-45 (Group II) are generic.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species **from each of A, B and C**, above, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shulamith H. Shafer, Ph.D. whose telephone number is 571-272-3332. The examiner can normally be reached on Monday through Friday, 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, Ph.D. can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SHS

A handwritten signature in black ink, appearing to read "Lorraine Spector". The signature is fluid and cursive, with a large initial "L" and a long, sweeping underline.

LORRAINE SPECTOR  
PRIMARY EXAMINER